

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

UNITED STATES OF AMERICA *et al.*,

Defendants.

Case No. C07-5679FDB/JKA

REPORT AND RECOMMENDATION  
TO DENY *IN FORMA PAUPERIS*  
STATUS, DISMISS ACTION  
AND DECLARE PLAINTIFF A  
VEXATIOUS LITIGANT

**NOTED FOR:  
March 21, 2008**

This Federal Tort Claims Act case/42 U.S.C. § 1983/Bivens action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. Plaintiff has filed a proposed complaint and applied for *in forma pauperis* status (Dkt. # 1). The court recommends that the application for *in forma pauperis* status be denied pursuant to 28 U.S.C. 1915 (e)(2) (i, ii, and iii). The court further recommends that plaintiff be declared a vexatious litigant and be precluded from filing any action *in forma pauperis* unless plaintiff can show he is in imminent

1 danger of serious bodily injury or death.

## 2 REPORT

3 Plaintiff alleges the Social Security Administration has illegal withheld social security  
4 payments from him and improperly charged him with an overpayment. He alleges he is actually a  
5 United States Citizen and not an illegal alien and that some of the checks sent to him were allegedly  
6 taken by another person. The alleged withholdings and overpayments cover a time span from 1992  
7 to the present.

8 When a complaint is frivolous or malicious, fails to state a claim upon which relief can be  
9 granted or, seeks monetary relief against a defendant who is immune or contains a complete defense  
10 to the action on its face, the court may dismiss an *in forma pauperis* complaint before service of  
11 process under 28 U.S.C. § 1915(e) (2)(B)(i, ii, and iii). Noll v. Carlson, 809 F.2d 1446, 575 (9th  
12 Cir. 1987) (*citing Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984)).

13 1. Plaintiff's allegation that he is a United States Citizen has been litigated in other forums.

14 The first reason for denial of *in forma pauperis* status is that plaintiff's citizenship claim has  
15 been adjudicated in other forums. Plaintiff is incarcerated at the Northwest Detention Center and is  
16 going through the process of deportation. Plaintiff has been found to be a deportable alien. Plaintiff  
17 has filed a number of Habeas Corpus petitions over the years under the names Rudder, Hopper, and  
18 Marks. The United States District Court for the Western District of Washington has held:

19 Petitioner has used or has been known by over fifty aliases, including Vincent  
20 Daniel Hopper, Wayne Ricky Elison Rudder, and Antolin Andrew Marks. (*Hopper v.*  
21 *Roach*, Case No. C05-1812-RSL, Dkt. #37 at L508-509-Pt. 1; L567-Pt. 1; L571-Pt.  
22 1). **Petitioner's fingerprints match the fingerprints of alien Wayne Ricky Elison Rudder, who is a native a citizen of Trinidad and who was admitted to the United States on or about March 7, 1974, as an immigrant.** (*Hopper v. Roach*, Case No. C05-1812-RSL, Dkt. #37 at L383-84-Pt. 1; R1034-35-Pt. 1; R1021-Pt. 1).

23 On or about September 24, 1991, the former Immigration and Naturalization  
24 Service ("INS") issued an Order to Show Cause ("OSC"), placing petitioner in  
25 deportation proceedings and charging petitioner with being deportable from the  
26 United States for having been twice convicted of Possession of a Controlled  
27 Substance. (*Hopper v. Roach*, Case No. C05-1812-RSL, Dkt. #37 at L555-69-Pt. 1;  
28 **R301-302-Pt. 1). Petitioner appeared for his deportation hearing before an Immigration Judge ("IJ") and admitted the allegations contained in the OSC and conceded deportability as charged.** Instead of deportation, petitioner filed an application for waiver of inadmissability under INA § 212(c) and an application for

1 asylum and withholding of deportation. On July 26, 1993, the IJ denied petitioner's  
 2 applications, and ordered petitioner deported from the United States to Trinidad on  
 3 the charges contained in the OSC. (*Hopper v. Roach*, Case No. C05-1812-RSL, Dkt.  
 4 #37 at R999-1021-Pt. 1). Petitioner appealed the IJ's decision to the Board of  
 5 Immigration Appeals ("BIA"), which was denied on November 4, 1993. (*Hopper v.*  
 6 *Roach*, Case No. C05-1812-RSL, Dkt. #37 at R1022-31-Pt. 1). On November 18,  
 7 1993, petitioner filed a direct appeal of the BIA's decision in the Ninth Circuit Court  
 8 of Appeals, which was dismissed for lack of jurisdiction. (*Hopper v. Roach*, Case No.  
 9 C05-1812-RSL, Dkt. # 37 at R753-54-Pt. 1). Petitioner also filed a Petition for  
 Emergency Stay of Deportation in the United States Court of Appeals for the District  
 of Columbia Circuit, which was dismissed on December 6, 1993, for improper venue.  
 (*Hopper v. Roach*, Case No. C05-1812-RSL, Dkt. #37 at R755-57-Pt. 1). On  
 December 8, 1993, petitioner filed a Motion for Emergency Stay of Deportation with  
 the United States Supreme Court, which was denied the same day. (*Hopper v. Roach*,  
 Case No. C05-1812-RSL, Dkt. #37 at R842-872-Pt. 1; L278-Pt. 1). On December  
 9, 1993, petitioner was removed from the United States to Trinidad. (*Hopper v.*  
*Roach*, Case No. C05-1812-RSL Dkt. #37 at L269-70-Pt. 1; L274-Pt. 1).

10 On January 14, 1994, only one month after he had been removed, petitioner  
 11 illegally reentered the United States without inspection. He remained in the United  
 12 States illegally for more than eleven years before he was discovered at the California  
 13 State Prison – Solano, where he was serving his sentence for a conviction for Grand  
 14 Theft. On August 18, 2005, petitioner was released from the California State Prison  
 15 and transferred to ICE custody. Petitioner claimed that he was Daniel Vincent  
 16 Hopper, born in Los Angeles, California, and that he had been deported to Trinidad in  
 1993 illegally. (*Hopper v. Roach*, Case No. C05-1812-RSL, Dkt. #37 at R996-98- Pt.  
 1). A fingerprint comparison performed by the Department of Homeland Security  
 Forensic Laboratory showed that petitioner's fingerprints matched the fingerprints of  
 an alien who went by the alias Ricky Elison Rudder who had been deported to  
 Trinidad on December 9, 1993. (*Hopper v. Roach*, Case No. C05-1812-RSL, Dkt.  
 #37 at R1033-34-Pt. 1).

17 On August 18, 2005, petitioner was served with a Warrant for Arrest of Alien,  
 18 a Notice of Custody Determination, and a Notice to Appear, placing him in removal  
 19 proceedings and charging him with removability for entering the United States  
 20 without being admitted or paroled, and for reentering the United States after being  
 21 ordered deported without being admitted or paroled. (*Hopper v. Roach*, Case No.  
 C05-1812-RSL, Dkt. #37 at L530-35-Pt. 1). On September 26, 2005, petitioner  
 22 appeared before an IJ, claiming that this was a case of mistaken identity and that he  
 23 was wrongfully removed in 1993. On October 12, 2005, petitioner filed an application  
 for asylum and withholding of removal. (*Hopper v. Roach*, Case No. C05-1812-RSL,  
 Dkt. #37 at L583-576-Pt. 1). His case was scheduled for trial on February 22, 2006,  
 on the issues of removability and asylum from Trinidad. (*Hopper v. Roach*, Case No.  
 C05-1812-RSL, Dkt. #37 at R1043-1045-Pt. 1; Dkt. #39 at 3 n.1).

24 On March 23, 2006, however, petitioner was transferred to the custody of the  
 25 Tacoma Police Department for extradition to California pursuant to a September 1,  
 2005, warrant for petitioner's arrest for a parole violation. (*Hopper v. Clark*, Case  
 26 No. C05-1812-RSL, Dkt. #59). On March 28, 2006, ICE filed a motion in the  
 27 Immigration Court requesting that petitioner's pending removal proceedings be  
 28 administratively closed because petitioner was no longer in ICE custody. On March  
 29, 2006, the IJ issued an Order administratively closing petitioner's removal  
 proceedings. (*Hopper v. Clark*, Case No. C05-1812-RSL, Dkt. #58, Ex. B). On April

1 11, 2006, petitioner returned to the NWDC after California officials decided not to  
2 extradite him, and his removal proceedings were reopened.

3 After a removal hearing, the IJ denied petitioner's application for asylum,  
4 withholding of removal, and withholding of removal under Article III of the  
5 Convention Against Torture, and ordered him removed to Trinidad and Tobago on  
6 December 1, 2006. (Dkt. #22). On February 1, 2007, the IJ denied petitioner's  
7 request for a change in custody status. Id. Petitioner timely appealed the IJ's removal  
8 order and bond order to the BIA. On April 11, 2007, the BIA dismissed petitioner's  
9 appeal of the IJ's removal order. Accordingly, petitioner's order of removal became  
10 administratively final on April 11, 2007. On April 20, 2007, the BIA dismissed  
11 petitioner's appeal of the IJ's bond order and vacated the IJ's bond order as moot,  
12 noting that neither the IJ nor the BIA had authority to set bond conditions because a  
13 final order of removal had been entered. Id. On May 3, 2007, petitioner filed a  
14 Petition for Review and a motion for stay of removal in the Ninth Circuit Court of  
15 Appeals. *Rudder v. Gonzales*, No. 07-71756 (9th Cir. filed May 3, 2007). Under  
16 Ninth Circuit General Order 6.4(c)(1), this caused a temporary stay of removal to  
17 automatically issue. The Petition for Review remains pending before the Ninth  
18 Circuit.

19 (*Marks v. Clark*, 06-CV-0717RSL/MAT, Dkt. # 25 Report and Recommendation)(Emphasis added,  
20 foot notes omitted)(Report and Recommendation adopted by the court July 23, 2007, Dkt. # 30).

21 Further, in another Habeas Corpus proceeding the court has held:

22 The sole and exclusive avenue for review of a citizenship claim is by direct  
23 petition for review to the United States Court of Appeals. *See Baeta v. Sonchik*, 273  
24 F.3d 1261, 1263-64 (9th Cir. 2001) (citing INA § 242(b)(5), 8 U.S.C. § 1252(b)(5)).

25 (*Marks v. Clark*, 07-CV-1679JLR/MAT Dkt. # 5 Report and Recommendation)(Report and  
26 Recommendation adopted, December 21, 2007 Dkt. # 9). As the citizenship claim has been  
27 adjudicated and can only now be challenged in the United States Court of Appeals, it cannot be  
28 raised in this proceeding and plaintiff is precluded from alleging he is a United States Citizen.

## 29 2. This action is a collateral challenge to findings of deportability.

30 The second reason to deny *in forma pauperis* status is that plaintiff's claim of citizenship is a  
31 collateral challenge to the facts that underpin his current incarceration and finding of deportability.  
32 When a confined person is challenging the very fact or duration of his physical imprisonment, and the  
33 relief he seeks will determine that he is or was entitled to immediate release or a speedier release from  
34 that imprisonment, his sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S.  
35 475, 500 (1973). In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has  
36 fully exhausted available state remedies **has no cause of action under § 1983 unless and until the**  
37 **REPORT AND RECOMMENDATION- 4**

1 **conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ**  
 2 **of habeas corpus."** Heck v. Humphrey, 512 U.S. 477, 487 (1994)(emphasis added). The court added:

3 Under our analysis the statute of limitations poses no difficulty while the state challenges  
 4 are being pursued, since the § 1983 claim has not yet arisen. . . . [A] § 1983 cause of  
 5 action for damages attributable to an unconstitutional conviction or sentence does not  
 6 accrue until the conviction or sentence has been invalidated.

7 Id. at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be made  
 8 based upon whether 'the nature of the challenge to the procedures [is] such as necessarily to imply the  
 9 invalidity of the judgment.' *Id.* If the court concludes that the challenge would necessarily imply the  
 10 invalidity of the judgment or continuing confinement, then the challenge must be brought as a petition  
 11 for a writ of habeas corpus, not under § 1983." Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir.1997)  
 12 (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)). The complaint fails to state a cause of action. As  
 13 plaintiff has not had the finding that he is not a United States Citizen overturned.

14 3. The issues raised in this action have been litigated in a prior case. Jurisdiction to  
 15 consider any claim regarding overpayment or denial of benefits lies exclusively under  
 16 42 U.S.C. 405 (g). Further, the plaintiff has been informed the defendants are  
 17 immune from suit pursuant to statute. This action is frivolous and malicious.

18 Plaintiff first challenged the overpayment and withholding of Social Security benefits in the  
 19 United States District Court for Maryland (Dkt # 1, proposed complaint, page 5 ¶ 24). The exhibits  
 20 to his complaint show his action was dismissed by the Honorable Alexander Williams Jr, United  
 21 States District Court Judge. The action was dismissed because plaintiff had failed to properly  
 22 exhaust his administrative remedies. The action was properly filed under the Social Securities Act.  
 23 The dismissal was pursuant to 42 U.S.C. §405 (g). (Dkt # 1, proposed complaint Exhibit H).  
 24 Plaintiff did not file a timely motion to have his case reviewed by an Administrative Law Judge  
 25 within 60 days of the final decision denying his claim. Instead, plaintiff has filed Tort Claims  
 26 regarding the overpayment and denial of benefits. He was specifically informed that any action  
 27 challenging denial of payments or overpayment had to brought pursuant to 42 U.S.C. 405 (g) (Dkt #  
 28 1, Exhibit O).

1 Further, in December of 2006, and January of 2007, the Social Security Administration again  
2 reviewed plaintiff's file and informed him of the dates of his payments, overpayments, and the  
3 reasoning behind the prior decision that he owed \$27, 633.67. The letter informs plaintiff a final  
4 decision in his case was rendered by Judge Williams and that plaintiff failed to file a request for a  
5 hearing before an Administrative Law Judge within the allowed 60 day time frame. (Dkt # 1,  
6 proposed complaint Exhibit "Q").

7 Finally, plaintiff filed a second tort claim. He was informed the defendants he is seeking to  
8 sue are statutorily immune. He was informed his claim was precluded by section 205 (h) of the  
9 Social Securities Act and that "no action against the United States; the Commissioner of Social  
10 Security or any other officer or employee thereof shall be brought under section 1331 or 1346 of  
11 Title 28, United States Code, to recover on any claim arising under' the Social Security Act" (Dkt #  
12 1, proposed compliant Exhibit "R"). Despite having been informed of the defendants immunity  
13 plaintiff has filed this action pursuant to the Federal Tort Claims Act and as a "Bivens" action (Dkt #  
14 1 proposed complaint). The courts jurisdiction would have to be pursuant to 28 U.S.C. § 1331 or  
15 1346.

16 The obvious defects in this action render the action frivolous and malicious.

17 4. Sanctions.

18 Plaintiff filed this action after already having lost the case in the United States District Court  
19 in Maryland. Pursuant to 28 U. S. C. 1915 (e)(2)(B)(i), formerly 28 U. S.C. 1915 (d), the court shall  
20 dismiss a case notwithstanding payment of the filing fee if the court determines the case is malicious.  
21 The standard for dismissal as "malicious" has not been well defined by case law but some guidance  
22 exists. In 1995 the District Court in Delaware considered the malicious standard and stated:

23 A separate standard for maliciousness is not as well established. *Deutsch* [67 F.3d  
24 1085-87] merely states that a district court "must engage in a subjective inquiry into  
25 the litigant's motivations at the time of the filing of the lawsuit to determine whether  
26 the action is an attempt to vex, injure, or harass the defendants." *Id.* Other Circuits,  
27 however, have offered more objective instances of malicious claims. For example, a  
28 district court may dismiss a complaint as malicious if it threatens violence or contains  
disrespectful references to the court. *Crisafi v. Holland*, 655 F.2d 1305  
(D.C.Cir.1981); *see also Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir.1981)  
(stating that courts may dismiss pleadings with abusive or offensive language pursuant



1 to the court's inherent powers under FRCP 12(f)). **In addition, a district court may**  
 2 **dismiss a complaint as malicious if it is plainly abusive of the judicial process or**  
 3 **merely repeats pending or previously litigated claims. *Id.*; *Van Meter v. Morgan*,**  
 4 **518 F.2d 366 (8th Cir.), *cert. denied*, 423 U.S. 896, 96 S.Ct. 198, 46 L.Ed.2d 129**  
 5 **(1975); *Duhart v. Carlson*, 469 F.2d 471 (10th Cir.1972), *cert. denied*, 410 U.S.**  
 6 **958, 93 S.Ct. 1431, 35 L.Ed.2d 692 (1973).**

7 Abdul-Akbar v. Department of Corrections, 910 F. Supp. 986, 999 (D. Del. 1995)(emphasis added).

8 Other courts have found the term “malicious” means irresponsible or harassing litigation. Daves v.

9 Scranton, 66 F.R.D.5 (E.D. Pa. 1975). The Pennsylvania District Court Stated:

10 The legal standard of 'frivolous or malicious' is not capable of precise definition for it  
 11 is a standard intended for administration within the broad discretion of the court and  
 12 to be applied with reasonable restraint but as a practical response to irresponsible  
 13 litigation which would otherwise be subsidized and encouraged by the generosity of  
 14 the *in forma pauperis* statute.

15 Daves v. Scranton, 66 F.R.D. 5 (E.D. Pa. 1975). This court adopts the Pennsylvania Districts  
 16 Courts' position. Mr. Marks has filed an action that is clearly frivolous and malicious. Were this  
 17 Mr. Marks only transgression a warning would be in order. The court, however, consider Mr. Marks  
 18 history as a litigant in this district and recommends entry of a sanctions order declaring him to be a  
 19 vexatious litigant and barring him from further in forma pauperis action unless he can show he is in  
 20 imminent danger of serious bodily injury or death.

21 This court has inherent power to regulate the extent to which abusive litigants can access the  
 22 courts. DeLong v Hennessey, 912 F. 2d 1144, 1147 (9th Cir. 1990) Cert denied, 498 U.S. 1001 (1990).  
 23 Generally the court should attempt to balance the litigants right of meaningful access against the courts  
 24 need to be free of abusive tactics. James Cello-Whitney v. Robert Hoover, 769 F. Supp 1155, 1158 (W.  
 25 D. Wash 1991); citing Franklin v. Murphy, 745 F.2d. 1221, 1228 (9th Cir. 1984).

26 The precursors for orders of this nature were first set forth in DeLong. DeLong v Hennessey,  
 27 912 F. 2d 1144, 1147 (9th Cir. 1990) Cert denied, 498 U.S. 1001 (1990). An order of this nature must:

28 (1) Give the litigant adequate notice to oppose the order before entry;

- (2) Present an adequate record for review by listing the case filings which support the order;
- (3) Include substantive findings as to the frivolous or vexatious nature of the litigant's filings; and
- (4) Be narrowly tailored to remedy only the plaintiff's particular abuses.

James Cello-Whitney v. Robert Hoover, 769 F Supp. 1155, 1158 (W.D. Wash. 1991).

This is a Report and Recommendation, not an order. Accordingly, Mr. Marks has notice of the proposed order and a chance to oppose entry of the order by way of objection. The record of abuses is recorded not only in this case, but also in the filings of other cases Mr. Marks has filed in this district in recent past. An over view of his litigation follows.

#### A. Case Histories

##### 1. Hopper v Roach 05-CV-1812RSL. (Habeas)

Petitioner claimed to be a United States citizen and requested release from custody. The District Court ruled it lacked jurisdiction to hear that claim, and a claim of that nature must be brought in the Ninth Circuit Court of Appeals. On appeal under Ninth Circuit cause number 5-80067 the Ninth Circuit entered a pre filing order regarding Petitioner. The appeal was denied as lacking merit. Petitioner is a citizen of Trinidad who illegally reentered the United States on January 14, 1994. (Marks v. Clark, 06-CV-0717RSL/MAT, Dkt. # 25 ).

##### 2. Marks v Clark 06-CV-0717RSL. (Habeas)

Case dismissed on the merits. An appeal was dismissed per a pre filing order in Ninth Circuit cause number 5-80067.

##### 3. Marks v Clark 06-CV-1679JLR. (Habeas)

Repetitive challenge claiming to be a United States citizen. Dismissed for lack of



1 jurisdiction. Appeal dismissed for failure to pay filing fee.

2 4. Marks v Clark 06-1796RSM. (Habeas)

3  
4 Same as number 3 above except appeal was dismissed per order in Ninth Circuit cause  
5 number 5-80067.

6 5. Marks v Gonzales 07-1608MJP. (Habeas)

7  
8 Renewed challenge claiming to be a United States Citizen

9 6. Hopper v Meyers 05-5680RBL (Bivens).

10 Plaintiff raised claims relating to the telephone system, medical treatment (not specified  
11 in any detail), the contents of the law library, and access to the law library. After extensive  
12 briefing the claims were dismissed. Appeal pending.

13  
14 7. Hopper v Morrison 06-5058FDB (Bivens).

15 Plaintiff sought damages and injunctive relief. He alleges the diet provided by Canteen  
16 Corporation is inadequate both as to amount of food and quality of food. He also alleges  
17 failure to provide a medical diet that meets his needs. Plaintiff challenges medical treatment  
18 on a number of fronts. He claims a brain injury; need to see specialists; orthopedic,  
19 neurologic and dermatology issues; and he alleges a RICO conspiracy to force residents to  
20 buy food at inflated prices. Case was dismissed on the merits as to skin care and diet. Appeal  
21 denied for failure to pay. The balance of the claims were dismissed as plaintiff is not able to  
22 sue, federal agencies, corporations, officials in their official capacity. This was the first case to  
23 raise the skin care and cosmetic issue.

24  
25  
26 8. Hopper v Clark 06-CV-5282RBL (Bivens)

27  
28 REPORT AND RECOMMENDATION- 9

1 Plaintiff alleges due process violations for custody changes and failure to pay wages  
2 due. He also raises a claim regarding the facilities refusal to release certified copies of Birth  
3 Certificates. All claims were addressed on the merits. Defendants were entitled to qualified  
4 immunity or the allegations failed to state a claim.  
5

6 9. Marks v Albin 06-CV-5675RBL (Bivens)

7 Plaintiff alleges false infractions and false reports were filed by numerous employees to  
8 retaliate against him and to place him in administrative and disciplinary segregation. Plaintiff  
9 also claims he could not help others with legal work because he was in segregation. Plaintiff  
10 alleges the conditions in segregation amount to torture because people next to him flood their  
11 cells or bang and yell. Petitioner also raises a claim based on failure to mail documents,  
12 including a mass mailing to congress. This is duplicative or overlaps the issues in Hopper v  
13 Wigens 05-CV-5662FDB.  
14

15 10. Marks v United States of America 06-CV-5696BHS (Bivens)

16 Plaintiff. claims, his religion mandates he eat alone. He claims his bible was taken from  
17 him, and that the rabbi who is not a named defendant refuses to see him. He claims he asked  
18 to see an Imam if a Rabbi was not available, and his request has been denied. Plaintiff also  
19 challenges the manner in which Ramadan is celebrated, but does not claim to be Muslim.  
20 Plaintiff claims to be a "Black Nazarite Jew." He brings these claims under the Religious  
21 Freedom Act (R.F.R.A.).  
22  
23

24 He also claims the rooms are kept cold to force people to go back to their countries  
25 and that staff took \$40.20 cents in "Property" from him. It is not clear if he is speaking about  
26 the taking of commissary items or if funds were taken to pay his postage bill (in several other  
27

1 cases he mentions the same amount of \$40.20 and claims commissary items were taken from  
2 him). He again raises the issue of false infractions or reports being written against him.  
3 Plaintiff also alleges “mental torture” because the staff refuses to use his new name and refer  
4 to him by the name he used when transferred. Plaintiff does not tie his new name to any  
5 religious belief or mandate of his faith. Case is pending.  
6

7 11. Hopper v Wiggins 05-CV-5662FDB (Bivens)

8 Plaintiff sought free postage for all mailings he submitted as “legal documents.”  
9 Plaintiff wished to have any document addressed to counsel, court embassy, other defendant,  
10 or any legal representative for government declared legal mail. Policy allows for five free  
11 mailings per week. In a second amended complaint plaintiff also challenged the practice of  
12 “scanning legal mail” prior to copying. He challenges the denial of free copies of all  
13 documents he considers “Legal Documents.” Case dismissed on plaintiff’s motion.  
14

15 12. Marks v Mc Burney 07-CV-5007BHS (Bivens).

16 Plaintiff alleges his first amendment rights were violated and he was infracted or  
17 disciplined for writing a letter to Neil Clark regarding a situation with another detainee. Mr.  
18 Clark is a federal employee and is named as the respondent in several of Mr. Mark’s habeas  
19 corpus petitions. Plaintiff claims discrimination based on color and sexual orientation. He  
20 complains of being handcuffed and of being placed in disciplinary segregation next to  
21 “mentally unfit persons.” He complains about having to shower naked when a security camera  
22 is present. He further alleges he was denied witnesses and evidence at his hearing. Plaintiff  
23 complains that he was also infracted for unauthorized use of equipment when he allegedly  
24 “made a form” on the computer. Plaintiff does not indicate what the form was.  
25  
26  
27

1 While plaintiffs' property was being packed for segregation, plaintiff alleges his cell  
2 mate gave him commissary items six soups and two punch drinks. After his stay in  
3 segregation plaintiff alleges the commissary items were seized and he was again infraacted, this  
4 time for unauthorized items. Plaintiff claims his being sent to segregation on this second  
5 infraction is retaliation for his filing Marks v Albin. Plaintiff alleges Mc Burney has instructed  
6 all staff to write reports concerning plaintiff. He alleges that in two weeks eight reports were  
7 written.  
8

9 Plaintiff complains about library access while in segregation and complains he cannot  
10 help others with their work. He alleges this is not targeted at him but at the people who seek  
11 his help. Case is still pending.  
12

13 13. Marks v Gephardt 07-CV-5259RJB  
14

15 Plaintiff attempted to file this action as a class action challenging medical and religious  
16 diets at the detention center. He sought a Halal diet for Muslims, and for a full calory diet  
17 during Ramadan. He also names Sikhs in the complaint as plaintiffs and alleges the Sikh  
18 religion requires a vegetarian diet. The company running the facility terminated the contract  
19 with their food provider and began serving food prepared in house in April of 2007. Plaintiff  
20 claims medical diets were no longer honored. He also again challenges skin care issues as  
21 raised in prior cases. He challenges food service personnel having access to medical  
22 information regarding the need for medical diets or cosmetics. The court ordered plaintiffs to  
23 file separate actions. This case proceeds only as to Mr. Marks. He raises the same allegation  
24 in an amended complaint with the exception of the inclusion of Sikhs.  
25

26 Plaintiff filed a motion for default in this case despite defendants having filed an answer  
27

1 more than two weeks prior to his filing his motion. While the court had the motion for default  
2 under consideration plaintiff filed motions to strike the answer and enter default and a motion  
3 for judgment on the pleadings. Case is pending  
4

5 14. Marks v Garman 07-CV-5282FDB.

6 Plaintiff alleges he submitted tort claims and the claims were denied by "ICE."  
7 Plaintiff claims he was denied documents he was entitled to under the privacy act, and that he  
8 lost cases as a result of not having those documents. He alleges "mental torture." Plaintiff  
9 alleges he sought information under the freedom of information act and sought the file of a  
10 person named Joanne Rudder. Plaintiff alleges he wished her to testify he is not Wayne  
11 Rudder. Plaintiff claims the information would have led to DNA tests on alleged siblings and  
12 proof he is not a Rudder. Plaintiff is seeking to collaterally challenge findings of fact in his  
13 deportation proceedings in this action. He specifically alleges he would have won his  
14 deportation case if he had this information.  
15  
16

17 Plaintiff also claims he has been denied access to his own file and infractions and  
18 incident reports in his file he wished to use in other litigation. He also alleges he has been  
19 refused copies of contracts or tariff filings in connection with his telephone cases and issues  
20 regarding the telephone system. Thus, plaintiff is challenging discovery rulings made in other  
21 cases that are not properly before this court in this case.  
22

23 He alleges "Mental Torture" because of the "threat of infliction of pain." Plaintiff also  
24 challenges the use of the name Rudder and alleges this has been done to cause him harm.  
25 Again, plaintiff is collaterally challenging findings of fact from his deportation cases and  
26 habeas actions. Plaintiff claims mental injury. Case is still pending.  
27

1        Cases 15 to 18.

2        Marks v USA 07-CV-5371RBL

3        Marks v Bennett 07-CV-5372RBL

4        Marks v USA 07-CV-5383RBL

5        Marks v USA 07-CV-5395RBL

6  
7  
8        In each of these cases IFP was denied as it appeared Mr. Marks had money in his  
9 private property in the form of money orders and checks. The cases were dismissed without  
10 prejudice and do not form the basis for a Report and Recommendation to declare Mr. Marks a  
11 vexatious litigant with the exception of Marks v USA 07-CV-5395RBL. This action  
12 contained a number of claims which had been litigated and lost in prior actions. Mr. Marks  
13 titled his proposed complaint “Everything and the Kitchen sink Bivens complaint.” The  
14 complaint is 73 pages long.

15  
16        Mr. Marks raises issues relating to the reading of mail duplicative of Hopper v  
17 Wiggins 05-CV5662FDB. Mr. Marks again raises his attempted mass mailing of 285 letters  
18 to congress. This issue is raised in Marks v Albin 06-CV-5675RBL and in Marks v USA 06-  
19 CV-5696BHS. He also complains of the reading of “correspondence he sent to a news  
20 paper.” Plaintiff again challenges his not being able to get documents needed for the filing of a  
21 passport and again challenges mail procedures in general.

22  
23        Plaintiff again raises the telephone call issue he litigated and lost in Hopper v Meyers  
24 05-CV-5680RBL. He raises the issue of not having certain evidence including the file of  
25 Joanne Rudder which is a pending issue in Marks v Garman 07-CV-5282FDB. This is also a  
26



1 collateral challenge to the propriety of the finding he is the same Wayne Rudder who was  
2 deported and who illegally reentered the United States on January 14, 1994.

3  
4 Plaintiff again alleges discrimination in the amount of law library access he is given and  
5 claims the discrimination is based on race and other factors such as sexual orientation. He  
6 again also raises the issues of infractions and sanctions and the conduct of infraction hearings  
7 as raised in Marks v Mc Burney 07-CV-5007BHS which was still pending at the time this case  
8 was filed.

9  
10 Beginning at paragraph 124 Mr. Marks again raises the issue of the birth certificates  
11 and collaterally challenges his deportation hearings and habeas action in a claim of wrongful  
12 imprisonment. This is the same issue raised in Hopper v Clark 06-CV-5282RBL.

13  
14 From page 36 paragraph 127 to page 40 plaintiff argues he is not Wayne  
15 Rudder, a Trinidad citizen and that he is in fact Daniel Hopper, a native of Los Angeles. Thus,  
16 plaintiff is still challenging his citizenship collaterally. Beginning on page 40 paragraph 146  
17 plaintiff asks for damages because he is separated from his estranged family and his continued  
18 incarceration prevents reconciliation.

19  
20 Plaintiff alleges he has been denied the right to counsel by telephone practices, and that  
21 the defendants have failed to mail his mail, even when proper postage had been placed on the  
22 mail. (Page 41, paragraphs 150 to 160).

23  
24 Plaintiff alleges denial of Notary services to him in paragraphs 167 to 180 and claims  
25 this denial of Notary services has resulted in a denial of access to courts.

26 Plaintiff alleges a failure to train or supervise on the part of defendant Melendez, and  
27

1 he alleges this failure to train or supervise has led to other defendants violating his right to  
2 practice his religion. He again complains of the taking of his Bible, repetitive of the allegation  
3 in Marks v United States of America 06-CV-5696BHS. Plaintiff also alleges the lack of  
4 training resulted in the loss of \$40.20 cents in commissary goods. This issue was also pending  
5 in Marks v United States of America,06-CV-5696BHS.  
6

7 Plaintiff again raises the issue of his being punished for a letter to Neil Clarke, This  
8 issue was pending in Marks v Mc Burney 07-CV-5007BHS. Beginning on page 50 paragraph  
9 195, plaintiff again raises the issue of his not being allowed to take his meals alone. This is  
10 also an issue in Marks v United States of America 06-CV-5696BHS. Plaintiff again raises  
11 mail issues including the sending of letters to embassies, congress etc. This issue has been  
12 repeatedly litigated. Marks v Albin 06-CV-5675RBL, Hopper v Wiggins 05-CV-5662FDB.  
13

14 Beginning at paragraph 212, plaintiff complains that money sent to him allegedly as  
15 thanks for doing legal work for another detainee was not allowed into the facility. Plaintiff  
16 returns to this issue and again raises it in the same complaint on paragraph 239.  
17

18 Beginning on page 57 paragraph 222, plaintiff again raises the issue of skin care. This  
19 issue was pending or already litigated in Hopper v Morrison 06-CV-5058FDB, Marks v  
20 Gephardt 07-CV-5259RJB.  
21

22 Beginning at page 58 paragraph 225, plaintiff accuses defendants of lying to the court  
23 and raises a number of items or issues many of which were litigated and lost in other cases.  
24 He also raises the issue of his money orders not being sent out as he directed to pay for  
25 magazine subscriptions, and his not being allowed to have friends send him shoes. At page 64  
26 paragraph 249 to 252, plaintiff complains of a disciplinary hearing and an alleged lack of due  
27

1 process.

2           Plaintiff complains of “torture” and raises allegations that the conditions of  
3 confinement in segregation are unsanitary and violate the mandates of his religion. He alleges  
4 he is being housed with mentally ill persons. This allegation exists in Marks v Albin 06-CV-  
5 5675RBL.  
6

7           On page 67 plaintiff complains that he is observed naked and a camera is in place in the  
8 shower area. Plaintiff also complains of being handcuffed, of searches of his person, of dental  
9 care and the process for obtaining dental care, and of the confidentiality of medical records.  
10 This complaint violates rule 8 (a). Further the complaint is duplicative of other litigation that  
11 was pending or had been dismissed. The complaint is frivolous and malicious.  
12

13           19.     Marks v. Clark 07-CV-5498RJB  
14

15           This was a habeas corpus challenging placement in segregation. The action was  
16 dismissed for failure to state a claim.

17           20.     Marks v. Giles 07-CV-5572RJB  
18

19           Plaintiff again alleges the conditions of confinement in segregation are  
20 unconstitutional, and that he is being housed with mentally ill persons. This allegation exists in  
21 Marks v Albin 06-CV-5675RBL. He again raises issues regarding food services, and that sack  
22 lunches are served to some persons in segregation. This allegation is duplicative and  
23 overlapping of the allegations in Hopper v Morrison 06-CV-5058FDB. He again challenges  
24 infractions that resulted in his placement in segregation, including an infraction for swearing at  
25 the grievance coordinator. This is duplicative of other cases.  
26

1           21.     Marks v Singh 07-CV-5666RJB.

2           This case was removed from Pierce County Superior court by the defendants. The  
3 case is duplicative of prior and currently pending litigation and plaintiff challenges the amount  
4 of food he is given. See, Hopper v Morrison 06-CV-5058FDB, and Marks v Gephardt 07-  
5 CV-5259RJB.  
6

7           He also again challenges not being allowed to mail 285 letters to congress at no cost to  
8 himself at one time(five a week are allowed by policy). This issue is duplicative of issues in  
9 Marks v Albin 06-CV-5675RBL.  
10

11          Plaintiff challenges the opening, scanning, and copying of mail. This is duplicative of  
12 Hopper v Wiggins 05-CV-5662FDB, as well as prior and pending litigation. Thus, not only is  
13 plaintiff repeatedly filing the same claims, he is filing the claims in multiple jurisdictions forcing  
14 the defendants to appear in a number of forums on the same claims.  
15

16          22.     Marks v De Guia 07-CV-5667BHS.

17          This action raises the birth certificate issue that he presented in Hopper v Clark 06-  
18 CV-5282RBL. He challenges his being placed in the Pierce County Jail on a detainer out of  
19 California. He also alleges a "breach of contract" for failure to pay him a dollar a day for  
20 work. This issue was litigated and decided against him in Hopper v Clark 06-CV-5282RBL.  
21 Plaintiff also complains of the taking of a \$40 dollar money order and the use of it by the  
22 corporation running the facility. This appears to be a new claim.  
23

24          23.     Marks v Bennett 07-CV-5674RBL.  
25

26          Plaintiff makes conclusory allegations regarding his being denied access to legal  
27

1 documents in storage. He claims to have lost several cases because he had no access to the  
2 documents in question. Plaintiff is collaterally challenging prior dismissals and his INS  
3 deportation case in this context. Plaintiff also raises the \$40 Dollar money order in this case  
4 and the case is thus duplicative of Marks v De Guia 07-CV5667BHS. This action is  
5 proceeding as to the only remaining defendant. All other defendants entered into a stipulated  
6 settlement with Mr. Marks.  
7

8 24. Marks v USA 07-CV-5679FDB.

9  
10 This action challenges Social Security payments and a decision made over a decade  
11 ago. The action was first filed as Marks v USA 07-CV-5383RBL. *In forma pauperis* status  
12 was denied as plaintiff appeared to have funds available to him. The case was dismissed  
13 without prejudice. This case appears subject to screening dismissal under 28 U.S.C. § 1915  
14 (e)(2) (B)(i, ii, and iii).  
15

16 B. Litigation Practices and Improper Filings.

17 1. Hopper v Roach 05-CV-1812RSL.

18  
19 Mr. Marks abused discovery by filing two motions asking for the same material ten  
20 days apart. He filed the second motion without waiting for the court's ruling on the first (Dkt  
21 # 42 and 45). Two motions ask for the same material and were filed ten days apart without  
22 waiting for a ruling. He also sought release from confinement pending a ruling on the case  
23 (Dkt # 44). In addition Plaintiff sought injunctive relief in this action and asked the court to  
24 order non-parties to the action to release a birth certificate to him. Plaintiff had obtained the  
25 birth certificate by mail (Dkt. # 56).  
26

27 When a motion to appoint counsel was denied, (Dkt # 28), Mr. Marks simply renewed

1 his motion (Dkt # 61). Finally, he attempted to file several petitions under the same cause  
2 number (Dkt # 22, 27, 63, 69, 84).

3  
4 2. Marks v. Clark 06-CV-0717RSL.

5 The original petition in this case was accepted for filing June 6, 2006 (Dkt # 6). Mr.  
6 Marks filed a second petition eight days later (Dkt # 10). Two days later an amended petition  
7 was filed (Dkt # 11). In other respects the case was not remarkable.

8  
9 3. Marks v Clark 06-CV-1679JLR.

10 Petitioner attempted to litigate the denial of counsel in other cases in this habeas  
11 action.

12  
13 4. Marks v Clark 07-CV-1796RSM.

14 This case proceeded in a normal fashion.

15  
16 5. Marks v. Gonzales 07-CV-1608MJP.

17 At the time *in forma pauperis* was granted a Report and Recommendation to dismiss  
18 was entered.

19  
20 6. Hopper v Meyers 05-CV-5680RBL.

21 Plaintiff moved for class certification prior to filing a complete application to proceed  
22 *in form pauperis*. Plaintiff then moved for default despite the fact that the court had ordered  
23 service only 20 days earlier (Dkt. # 22). In the discovery phase plaintiff attempted to depose  
24 fellow detainees who are not parties to this action.

25  
26 When some of the defendants moved to dismiss plaintiff attempted to have the motions  
27 stayed. Plaintiff aggressively pursued discovery on a wide range of topics as is evidenced by



1 his first motion to compel (Dkt. # 83). Plaintiff also filed a number of motions without noting  
2 them which resulted in some motions not being placed on the courts calendar. Plaintiff sought  
3 to have the court rule on issues of fact piece meal. He filed a motion for partial summary  
4 judgment that does not address the case on the merits in any fashion. The motion asks the  
5 court to find grievances submitted by plaintiff to the defendants were not always returned to  
6 him (Dkt # 62). In July of 2007, plaintiff began filing documents that are not attached to any  
7 motion and are not properly part of the file (Dkt # 90). When defendants moved for summary  
8 judgment plaintiff again sought to stay the courts consideration of the motion (Dkt # 97).  
9

10  
11 Plaintiff filed a second motion for class certification despite the courts already having  
12 ruled on that issue (Dkt # 101). Plaintiff continued to file pleadings that were not in support  
13 of motions (Dkt # 108). On September 27, 2006, the court issued a warning to plaintiff  
14 regarding his filings (Dkt # 114). The court stated:

15  
16 At the onset of this action several detainees filed motions asking for  
17 class certification and asking they be added as plaintiffs in this action. (Dkt. #  
18 4, 6, 7, 9). The court entered a Report and Recommendation to deny class  
19 certification. (Dkt # 18). On April 12<sup>th</sup>, 2006 the District Court Judge adopted  
20 that Report and Recommendation and denied the motion to certify a class.  
21 (Dkt. # 54).

22  
23 Now, plaintiff has filed a 36 page motion signed by six detainees not  
24 including Mr. Hopper AKA Marks. (101). Plaintiff specifically mentions rule  
25 23 and addresses the prerequisites for filing a class action. (Dkt. # 101, page  
26 3). The plaintiff has also filed a multi hundred page declaration in support of  
27 the motion. (Dkt. # 102). These filings are not the first over length filings  
28 from the plaintiff in this action.

29  
30 This motion is a repetitive motion for class certification. Plaintiff's  
31 motion and over length declaration will not be considered on the merits. The  
32 court has already declined to certify a class in this action. Further, no over  
33 length filings will be considered unless the party has sought and obtained leave  
34 of court to file an over length pleading.

35  
36 The filings in this action are becoming abusive. When class certification  
37 was denied at the beginning of this action plaintiff could have moved for  
38

1 reconsideration. Plaintiff did not do so and in fact filed a pleading indicating he  
2 concurred with the Report and Recommendation not to certify a class. (Dkt #  
3 21). A subsequent motion, this late in the case, is not well taken. Included in  
4 that motion is a request for counsel. Plaintiff has already moved for  
appointment of counsel in this action and his motion was denied. (Dkt # 36,  
and 43).

5 Plaintiff has also filed a pleading which he titled a "general declaration"  
6 in which plaintiff indicates what he may testify to in the future. (Dkt. # 108).  
7 This is not a proper filing or pleading and it will not be considered by the court  
or cited to by any party. The pleading is not evidence and is at best a  
declaration as to what may happen in the future.

8 Plaintiff is hereby warned that this court will not tolerate filings which  
9 needlessly increase the cost of litigation or are filed for an improper purpose.  
Further, the court will not allow over length filings that are violations of the  
10 court's local rules. Future pleadings that are improper may result in sanctions  
including monetary sanctions, dismissal of actions, and limitation on plaintiff's  
11 ability to proceed *in forma pauperis* in this or future actions. The relief  
sought in documents 101 and 102 is **DENIED**.

12  
13 (Dkt. # 114). Plaintiff moved for reconsideration (Dkt # 119).

14 In disregard of the court's warning plaintiff filed a number of over length documents in  
15 response to a subsequent motion for summary judgment (Dkt # 151, 152, 154, and 155).

16 Plaintiff also filed a number of pleadings that are not allowed under the Federal Rules of Civil  
17 Procedure. These filings include multiple responses to pending motions (151, 152, 154, 155,  
18 158, and 159).

19  
20 It was at approximately this point in the proceedings when plaintiff filed a document  
21 under seal in other cases that contained threats of harm to persons and security information  
22 regarding the facility. The plaintiff then filed what he termed an "apology" in another case  
23 reiterating the same disturbing and potentially dangerous information. That document remains  
24 sealed. An order sealing all of plaintiff's filings pending review and unsealing is now in place to  
25 prevent plaintiff from further misconduct of this nature.  
26  
27

1 The court addressed plaintiff's over length filings and issued an order to show cause  
2 why sanctions should not be imposed (Dkt # 184). The district court dismissed the action on  
3 summary judgment prior to imposition of sanctions (Dkt # 188).

4  
5 7. Hopper v Morrison 06-CV-5058FDB.

6 The action was filed and served. Defendants filed multiple motions to dismiss.  
7 Plaintiff then filed a motion asking for additional library time. Access to courts is not an issue  
8 in this action. Plaintiff also filed a motion to stay consideration of the motions to dismiss. The  
9 motions to dismiss were re-noted and plaintiff was given over two additional months to file a  
10 response (Dkt # 29). During the time plaintiff was granted to file a response plaintiff again  
11 engaged in aggressive discovery. Defendants moved to stay discovery until the motions to  
12 dismiss had been addressed (Dkt # 30). Defendants motion and the attached exhibits outline  
13 the abusive nature of plaintiff's discovery requests. In a suit involving food and food services  
14 plaintiff sought stock holder information and information that was irrelevant , oppressive, and  
15 abusive. Plaintiff again filed a declaration not attached to any specific motion (Dkt # 34).

16  
17  
18 Rather than simply responding to the motions to dismiss, plaintiff filed a motion to  
19 strike defendant's motions to dismiss (Dkt # 35). The plaintiff referred to information in  
20 defendant's motions as "scandalous, impertinent, and oppressive" (Dkt # 35). Review of his  
21 pleading shows the sole basis for plaintiff's motion was the fact that he and other detainees  
22 were referred to as "prisoners." The court granted this motion to the extent it ordered  
23 defendants not to refer to plaintiff as a "prisoner". Plaintiff also filed a motion to compel  
24 discovery despite the fact that motion to stay discovery was pending (Dkt # 38), and a motion  
25 to amend the complaint rather than responding to the pending motions to dismiss (Dkt. # 45).

1 In July of 2006, Plaintiff again began filing documents not associated with any  
2 particular motion (Dkt # 49 and 51). The case was dismissed at the motion to dismiss stage.

3  
4 8. Hopper v Clark 06-CV-5282RBL.

5 The action was commenced and some of the defendants moved to dismiss. Plaintiff  
6 filed a response and an "errata" (Dkt # 18 and 19). The motion to dismiss was re-noted and  
7 plaintiff then filed a second response to the motion ( Dkt # 23). The motion to dismiss was  
8 granted and plaintiff then moved to compel discovery and for sanctions regarding the  
9 remaining defendants. (Dkt # 29). Plaintiff's motion was granted in part and denied in part.  
10

11 The remaining defendants filed a motion to dismiss (Dkt # 30). Plaintiff filed a  
12 response (Dkt # 45). Defendant's filed a reply (Dkt # 48). Plaintiff then filed a rebuttal  
13 pleading that is not allowed in the rules of this court (Dkt. # 52). The court granted remaining  
14 defendants motion to dismiss.  
15

16 9. Marks v Albin 06-CV-5675RBL.

17 The original complaint in this action violated Fed. R. Civ. P. 8, and plaintiff was  
18 ordered to file an amended amend (Dkt. # 8). The amended complaint suffered from the same  
19 defects as the original. A second order to amend was entered (Dkt. # 10). Plaintiff moved to  
20 be allowed limited discovery prior to filing an amended complaint and moved for an extension  
21 of time to file an amended complaint. Both motions were denied.  
22

23 A Report and Recommendation to dismiss was entered. Two days later plaintiff filed a  
24 third amended complaint. The District Court Judge allowed the untimely complaint and re-  
25 referred the case. Plaintiff began filing documents jeopardizing the safety of Northwest  
26 Detention Facility employees in other cases. He later filed an apology ironically renewing  
27  
28 REPORT AND RECOMMENDATION- 24

1 some of the same threats (Dkt # 23). His actions resulted in sanctions. That document  
2 remains under seal and all of plaintiff's filings are now filed under seal and reviewed prior to  
3 unsealing  
4

5 Defendants did not file a timely answer and plaintiff moved for default. Prior to the  
6 motion being heard, defendants filed an answer and cured the default. A Report and  
7 Recommendation to deny default was entered (Dkt. # 30).  
8

9 Plaintiff then moved to strike the answer and enter default (Dkt # 33). He also filed  
10 objections to the Report and Recommendation (Dkt # 34), and a motion for judgment on the  
11 pleadings regarding defendants counter claim (Dkt. # 35). This case later settled as part of a  
12 stipulated settlement.

13 10. Marks v USA 06-CV-5696BHS.  
14

15 The court ordered this case served in May of 2006. In July the federal defendants filed  
16 a motion to dismiss (Dkt. # 24). Defendants also moved to stay discovery in this action (Dkt  
17 # 29). Discovery was stayed, and defendants motion was granted (Dkt # 36 and 43). Plaintiff  
18 then filed a motion for default as to the remaining defendants and defendants then filed an  
19 answer curing the default (Dkt # 44 and 45).  
20

21 Plaintiff then filed an untimely motion asking for a rehearing on the order to dismiss  
22 federal defendants (Dkt. # 49). The court denied his motion (Dkt # 51). The court  
23 sanctioned plaintiff for filing an over length pleading (Dkt # 50). That sanction was  
24 overturned on appeal to the district court judge (Dkt # 62). Plaintiff then moved to strike  
25 defendants answer and again moved for default (Dkt # 53).  
26

27 Plaintiff then filed a "renewed motion" for rehearing on the issue of the federal  
28 REPORT AND RECOMMENDATION- 25

1 defendants being dismissed from this action (Dkt # 58). Several motions are currently  
2 pending.

3  
4 11. Hopper v Wogens 05-CV-5662FDB.

5 Plaintiff began filing motions for preliminary injunction and multiple amended  
6 complaints prior to a grant of *in forma pauperis* in this action (Dkt # 3, 4, and 10). He also  
7 filed multiple amended complaints without leave of court (Dkt # 14 and 15).

8  
9 Plaintiff then moved to dismiss the action claiming the defendants conduct had  
10 improved (Dkt. # 21). When a Report and Recommendation was entered to dismiss,  
11 however, plaintiff opposed the motion claiming a “slight” change in circumstances (Dkt # 30  
12 and 31). The case was dismissed and plaintiff moved to re-open the case. His motion was  
13 denied.

14  
15 12. Marks v McBurney 07-CV-5007BHS.

16 This action has been the subject of substantial delay due to service issues unrelated to  
17 plaintiff’s conduct. Plaintiff filed a document not connected to any motion on October 17,  
18 2007 (Dkt # 20). Defendants did not file a timely answer and plaintiff moved for default in  
19 November of 2007. Defendants then answered and cured the default (Dkt # 21 and 22). A  
20 Report and Recommendation to deny default was entered (Dkt # 24).

21  
22 Without waiting for a ruling on the Report and Recommendation plaintiff moved to  
23 strike the answer and enter default, (Dkt # 27), and for judgment on the pleadings with regard  
24 to defendants counterclaim (Dkt # 29). The parties later entered into a stipulated settlement  
25 with regard to this and several other cases.  
26



1           13.   Marks v Gephardt 07-CV-5259RJB.

2           Plaintiff filed a frivolous motion for default (Dkt. # 23). The motion is frivolous as  
3 defendants answered the complaint two weeks prior to the motion being made. Plaintiff  
4 motion includes defendants who had answered. Plaintiff moves to strike the answers and have  
5 the court enter default (Dkt. # 29). Plaintiff again seeks wide ranging and burdensome  
6 discovery including production and free copies of e-mails, educational background of the  
7 defendants, policies, and complete files regarding him (Dkt. # 30). In a relatively short time  
8 span the parties have filed a large number of motions.  
9

10  
11           14. Marks v Garman 07-CV-5282FDB.

12           This case is relatively new and the only improper filing is plaintiff filing notices  
13 unrelated to the case (Dkt # 12).  
14

15           15 to 18.

16           Marks v USA 07-CV-5371RBL

17           Marks v Bennett 07-CV-5372RBL

18           Marks v USA 07-CV-5383RBL

19           Marks v USA 07-CV-5395RBL

20           IFP was denied in these cases.  
21

22  
23           19.   Marks v Clark 07-CV-5498RJB.

24           This case was opened and a Report and Recommendation to dismiss was entered.  
25 That Report and Recommendation was adopted.  
26

27           20.   Marks v Giles 07-CV-5572RJB.

28           REPORT AND RECOMMENDATION- 27

1 This case is just over four months old and no remaining defendant has accepted  
2 service.

3  
4 21. Marks v Singh 07-CV-5666RJB.

5 There has been no activity in this case since Mr. Marks settled a number of cases by  
6 stipulated order. There are three remaining defendants.

7  
8 22. Marks v De Guia 07-CV-5667BHS.

9 In response to a motion to dismiss this action as repetitive Mr. Marks states :

10 The defendants hit the nail on the head when they state that the plaintiff  
11 is filing against **nearly identical defendants raising nearly identical causes**  
12 **of action and claims.** The key there is that **nearly identical** is not identical.  
(Marks v De Guia, 07-CV-5667BHS Dkt. # 12, page 4).

13 Plaintiff goes on to indicate he believes he has a right to file an action against the corporation  
14 running the facility where he is housed in other courts in “Pierce County, Miami County, Clark  
15 County, Nevada, Boston, Massachuset, New York New York, Washington D.C., Godlsboro,  
16 North Carolina, and anywhere Geo does business.” Plaintiff indicates the only restraint on him  
17 is his belief that his rights have been violated and that he has not gained a fair hearing (Marks  
18 v De Guia, 07-5667BHS Dkt. # 12, page 5). The court views plaintiff’s argument as a clear  
19 indication plaintiff will not accept any ruling on the merits where he does not prevail.

20  
21 23. Marks v Bennett 07-CV-5674RBL.

22 This is a new action and the court is waiting for service copies of an amended  
23 complaint.

24  
25 24. Marks v USA 07-CV-5679FDB.

26 This is the repetitive social security case currently before this court.

RECOMMENDATION

The court recommends plaintiff's application to proceed *in forma pauperis* be denied as this action is frivolous and malicious, fails to state a claim upon which relief can be granted, and seeks monetary relief against defendants who are immune because the action contains a complete defense on its face. This action is subject to dismissal under 28 U.S.C. 1915 (e)(2)(B)(i, ii, and iii). It cannot be cured by amendment

Given this case history and the specific abuses noted above which include the filing of duplicative vexatious actions, discovery abuses, and the filing of improper documents which endanger the security of the Northwest Detention Center, the court recommends that Mr. Marks be declared a vexatious litigant and that he be denied *in forma pauperis* status. Exercise of the court's discretion, applied with reasonable restraint as a practical approach to irresponsible litigation, now requires that Mr. Marks be prohibited from filing any further actions *in forma pauperis* unless he certifies under penalty of perjury that he is in imminent danger of death or serious bodily injury.

The court has tried lesser sanctions and has attempted to leave the privilege of filing *in forma pauperis* open for this litigant. Mr. Mark's abuse of the legal system has continued unabated.

The court anticipates Mr. Marks will begin to file his actions in state courts. Any action filed in state court and removed to federal court should be subject to this order. Unless the plaintiff certified under penalty of perjury that he was in imminent danger of death or serious bodily injury, plaintiff should not be permitted to proceed without payment of the filing fee.

1 In spite of the court's efforts, sanctions heretofore imposed have been ineffective. The  
2 filing of the same causes of actions in Federal Court and Superior Court is additional and  
3 strong evidence of the impropriety of plaintiff's motives.  
4

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
6 Procedure, the parties shall have ten (10) days from service of this Report to file written  
7 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
8 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the  
9 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on  
10 **March 21, 2008.** as noted in the caption.  
11

12 DATED this 22<sup>nd</sup> day of February 2008.  
13  
14

15 /S/ J. Kelley Arnold

16 J. Kelley Arnold

17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27